



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/170625

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on January 05, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On October 19, 2015 the agency sent the petitioner an overpayment notice. The notice stated that the petitioner was overpaid \$3,159.43 in BadgerCare (BC) Plus benefits under claim number [REDACTED] for the period of December 1, 2014 through May 31, 2015.

3. The Division of Hearings and Appeals received the petitioner's Request for Fair Hearing on December 8, 2015.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5). All negative notices sent by the agency include standard language informing recipients of how to appeal and the time limits for appeal. If the appeal is untimely the Division of Hearings and Appeals does not have jurisdiction to review its merits. There is no "good cause" exception to that time limit.

The agency sent the petitioner these overpayment notices on October 19, 2015. The Division of Hearings and Appeals did not receive the petitioner's Request for Fair Hearing until December 8, 2015. This is beyond the 45 day time limit for appeal. Thus, I am without jurisdiction to reach the merits of this case.

I note that even if I had jurisdiction, I would find that this overpayment is correct. The petitioner applied for, and began receiving BC Plus coverage, when he was not working. The agency sent the petitioner a notice stating that if his monthly gross income increased above \$972.50, he had to report this by the 10th day of the following month. The petitioner obtained employment as a truck driver. His gross monthly income increased to over \$3,000. The petitioner failed to report this increase, which caused an overpayment.

The petitioner argued that the overpayment was not his fault because he was put on hold when contacting the call center to report his new job. He further argued that he was unable to report this information in person. The agency pointed out that people who come to the agency to report changes in person are given a form to complete. Although the petitioner went in person to the incorrect building, he was on the correct campus, and the agency testified that they would have directed him to the correct building. I further note that the petitioner could have easily reported this change online. Ultimately, it was the petitioner's responsibility to report his increase in income, and he failed to report that change causing the overpayment. For all those reasons, I would have found that the overpayment was correct were the petitioner's appeal timely filed.

CONCLUSIONS OF LAW

The petitioner's appeal of this overpayment is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 7, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability